

ABM

STATE OF NEW MEXICO  
SAN MIGUEL COUNTY  
FOURTH JUDICIAL DISTRICT

MARC GRANO, As Wrongful Death  
Personal Representative of the Estate of  
FRANCISCA MARMOLEJO, Deceased

Plaintiff,

vs.

PINNACLE HEALTH FACILITIES XXXIII, LP  
d/b/a SAGECREST NURSING AND  
REHABILITATION CENTER

Defendant.

No. D-412-CV-2016-00573

Sandoval, Matthew J.

**COMPLAINT FOR NURSING HOME NEGLIGENCE, WRONGFUL DEATH  
AND PUNITIVE DAMAGES**

COMES NOW Plaintiff, MARC GRANO, As Wrongful Death Personal Representative for the Estate of FRANCISCA MARMOLEJO, Deceased, by and through their attorneys, and for their Complaint against Defendant PINNACLE HEALTH FACILITIES XXXIII, LP d/b/a SAGECREST NURSING AND REHABILITATION CENTER and states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. MARC GRANO has been appointed Personal Representative for the Estate of FRANCISCA MARMOLEJO, Deceased for purposes of prosecuting this action under the New Mexico Wrongful Death Act. A copy of the Order appointing him is attached as Exhibit 1.
2. MARC GRANO is a resident of San Miguel County and venue is appropriate in this Court.

3. Defendant PINNACLE HEALTH FACILITIES XXXIII, LP d/b/a SAGECREST NURSING AND REHABILITATION CENTER is a foreign limited partnership conducting business in the State of New Mexico. Defendant is doing business as the Owner/Operator of Sagecrest Nursing and Rehabilitation Center and may be served with process by serving its registered agent, National Registered Agents, Inc., 206 South Coronado Avenue, Espanola, NM 87532-2792.
4. This Court has personal jurisdiction over this cause because the Defendant conducts business within the State of New Mexico and has sufficient contacts to warrant the exercise of Jurisdiction in New Mexico.
5. All conditions precedent to filing suit have occurred.

#### **FACTUAL ALLEGATIONS**

6. FRANCISCA MARMOLEJO was a resident of Defendant PINNACLE HEALTH FACILITIES XXXIII, LP d/b/a SAGECREST NURSING AND REHABILITATION CENTER. At all relevant times herein, SAGECREST NURSING AND REHABILITATION CENTER was a facility owned and/or operated by PINNACLE HEALTH FACILITIES XXXIII, LP.
7. As a direct and proximate result of the negligent care and treatment of FRANCISCA MARMOLEJO at PINNACLE HEALTH FACILITIES XXXIII, LP d/b/a SAGECREST NURSING AND REHABILITATION CENTER, FRANCISCA MARMOLEJO died on June 4, 2014.

#### **COUNT I** **NEGLIGENCE, WRONGFUL DEATH AND PUNITIVE DAMAGES**

8. Plaintiff realleges the allegations contained in the previous paragraphs.

9. During the course of FRANCISCA MARMOLEJO's residence at SAGECREST NURSING AND REHABILITATION CENTER, and while she was under the medical and/or nursing care and treatment of the agents, servants, representatives, and/or employees of Defendant herein, said agents, servants, representatives and/or employees committed certain acts and/or omissions which constituted negligence in the care and treatment of FRANCISCA MARMOLEJO.
10. At the time of her residency, PINNACLE HEALTH FACILITIES XXXIII, LP d/b/a SAGECREST NURSING AND REHABILITATION CENTER owed a duty to provide care and services to FRANCISCA MARMOLEJO.
11. Defendant owed a duty to provide care and services to FRANCISCA MARMOLEJO, including possessing and applying the knowledge and using the skills and care ordinarily used by reasonably well-qualified nursing facilities acting under similar circumstances.
12. As a direct and proximate result of the negligent care and treatment by Defendant, their agents, servants, representatives and/or employees, FRANCISCA MARMOLEJO suffered injuries, including but not limited to falls, severe physical pain, suffering, mental anguish, hip fracture and death.
13. The negligence of the Defendant PINNACLE HEALTH FACILITIES XXXIII, LP d/b/a SAGECREST NURSING AND REHABILITATION CENTER, acting by and through its agents, servants, representatives, and/or employees, include, but are not limited to the following:
  - i. failure to properly monitor, observe, and assess the Plaintiff, FRANCISCA MARMOLEJO;

- ii. failure to hire and train appropriate personnel to monitor, supervise, and/or treat Plaintiff, FRANCISCA MARMOLEJO;
- iii. Failure to provide sufficient numbers of staff to meet Plaintiff's fundamental care needs;
- iv. failure to provide a safe living environment to Plaintiff, FRANCISCA MARMOLEJO;
- v. failure to hire and train appropriate personnel to monitor, supervise, and/or maintain a safe living environment for Plaintiff, FRANCISCA MARMOLEJO;
- vi. failure to recognize significant environmental factors which posed a fall risk to Plaintiff, FRANCISCA MARMOLEJO, and to respond to the same;
- vii. failure to hire and train appropriate personnel to recognize, prevent and/or remedy situations which create an unreasonable risk of falling to Plaintiff, FRANCISCA MARMOLEJO;
- viii. failure to properly and timely treat the Plaintiff FRANCISCA MARMOLEJO;
- ix. failure to timely recognize significant changes in the condition of Plaintiff FRANCISCA MARMOLEJO, and respond to the same.

14. One or more of the aforementioned acts constitute negligence and was a cause of the injuries and death of FRANCISCA MARMOLEJO, and the damages suffered by Plaintiff herein.

15. The actions of Defendant were malicious, willful, reckless and/or done with wanton disregard for FRANCISCA MARMOLEJO, giving rise to punitive damages against Defendant.

16. As a direct and proximate result of PINNACLE HEALTH FACILITIES XXXIII, LP d/b/a SAGECREST NURSING AND REHABILITATION CENTER's wrongful acts or failures to act, Plaintiff, MARC GRANO, as the Wrongful Death Personal Representative for the estate of FRANCISCA MARMOLEJO, Deceased should recover compensation for the following:

- i. conscious pain and suffering damages suffered by FRANCISCA MARMOLEJO prior to her death;
- ii. loss of enjoyment of life;
- iii. reasonable and necessary medical expenses incurred on behalf of FRANCISCA MARMOLEJO;
- iv. funeral and burial expenses incurred on behalf of FRANCISCA MARMOLEJO;
- v. punitive damages; and
- vi. such further relief as this Court may deem appropriate.

17. The death of FRANCISCA MARMOLEJO was caused by the wrongful act, neglect or default of another, and Plaintiff is entitled, pursuant to §41-2-1 NMSA 1978, to recover damages against Defendant, the sum to be distributed according to the New Mexico Wrongful Death Act.

**COUNT II**  
**Respondeat Superior**

18. Plaintiff realleges the allegations contained in the previous paragraphs.

19. Plaintiff believes and alleges that at all times material herein, Defendant PINNACLE HEALTH FACILITIES XXXIII, LP d/b/a SAGECREST NURSING AND REHABILITATION CENTER acting by and through its agents, servants, representatives and/or employees, committed negligent and/or reckless omissions in the care and treatment of FRANCISCA MARMOLEJO which caused injury, damages and death to FRANCISCA MARMOLEJO and therefore, Defendant is liable to Plaintiff under the doctrine of *respondeat superior* for the negligent and/or reckless acts and/or omission of its agents, servants, representatives and/or employees.
20. As a direct and proximate result of the negligent and/or reckless acts and/or omissions of PINNACLE HEALTH FACILITIES XXXIII, LP d/b/a SAGECREST NURSING AND REHABILITATION CENTER, acting by and through its agents, servants, representatives and/or employees, FRANCISCA MARMOLEJO suffered injuries including but not limited to falls, severe physical pain, suffering, mental anguish, hip fracture and death.
21. As a direct and proximate result of Defendant and its agents, servants, representatives and/or employees' wrongful acts and/or failures to act, Plaintiff, MARC GRANO, as the Wrongful Death Personal Representative for the Estate of FRANCISCA MARMOLEJO, Deceased, should recover compensation for the following:
- a. Conscious physical and mental pain and suffering, emotional distress, impairment and death;
  - b. Reasonable and necessary medical, hospital and funeral expenses; and

- c. The aggravating circumstances attending the wrongful act, neglect or default.

WHEREFORE, Plaintiff prays for relief as follows:

- i. For a trial by jury.
- ii. That Plaintiff, MARC GRANO, as the Wrongful Death Personal Representative for the Estate of FRANCISCA MARMOLEJO, Deceased recover a judgment for compensatory damages, including conscious pain and suffering and emotional distress suffered by FRANCISCA MARMOLEJO prior to her death.
- iii. That Plaintiff, MARC GRANO, as the Wrongful Death Personal Representative for the Estate of FRANCISCA MARMOLEJO, Deceased recover for the value of FRANCISCA MARMOLEJO's life apart from its earning capacity.
- iv. That Plaintiff, MARC GRANO, as the Wrongful Death Personal Representative for the Estate of FRANCISCA MARMOLEJO, Deceased recover reasonable and necessary medical and hospital expenses incurred on behalf of FRANCISCA MARMOLEJO.
- v. That Plaintiff, MARC GRANO, as the Wrongful Death Personal Representative for the Estate of FRANCISCA MARMOLEJO, Deceased recover funeral and burial expenses incurred on behalf of FRANCISCA MARMOLEJO.
- vi. That Plaintiff, MARC GRANO, as the Wrongful Death Personal Representative for the Estate of FRANCISCA MARMOLEJO, Deceased

recover a judgment for the aggravating circumstances attending the wrongful act, neglect or default.

- vii. That Plaintiff, MARC GRANO, as the Wrongful Death Personal Representative for the Estate of FRANCISCA MARMOLEJO, Deceased recover a judgment for all compensatory damages allowable under New Mexico law.
- viii. That Plaintiff, MARC GRANO, as the Wrongful Death Personal Representative for the Estate of FRANCISCA MARMOLEJO, Deceased recover prejudgment and post-judgment interest as allowed by NMSA 1978, section 56-8-4 (1993).
- ix. That Plaintiff recovers punitive damages.
- x. That Plaintiff recovers such other and further relief to which he may be entitled under New Mexico law.

Respectfully submitted,

TOM RHODES LAW FIRM P.C.

By: /s/ Laura Pazin Porter  
LAURA PAZIN PORTER  
126 Villita Street  
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ATTORNEY FOR PLAINTIFF



FILED IN  
4th JUDICIAL DISTRICT COURT  
9/29/2015 12:01:30 PM  
HJT

STATE OF NEW MEXICO  
SAN MIGUEL COUNTY  
FOURTH JUDICIAL DISTRICT COURT

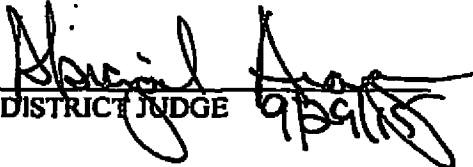
No. D-412-CV-2015-00383

IN THE MATTER OF THE ESTATE OF  
FRANCISCA MARMOLEJO, DECEASED.

**ORDER APPOINTING MARC GRANO  
AS WRONGFUL DEATH PERSONAL REPRESENTATIVE  
OF THE ESTATE OF FRANCISCA MARMOLEJO, DECEASED**

THIS COURT, having been advised of the circumstances by the Petition for the Appointment of a Personal Representative under the Wrongful Death Act NMSA 1978, Section 41-2-3, and finding the appointment of a personal representative under the Wrongful Death Act appropriate, appoints MARC GRANO, Esq. as personal representative for purposes of the investigation and pursuit of any action pursuant to the Wrongful Death Act.

IT IS SO ORDERED.

  
DISTRICT JUDGE

Respectfully Submitted:

TOM RHODES LAW FIRM, P.C.

By /s/ Laura Pazin Porter  
LAURA PAZIN PORTER  
126 Villita Street  
San Antonio, Texas 78205  
(210) 225-5251 (Tel.)  
(210) 225-6545 (Facsimile)  
ATTORNEYS FOR PETITIONER

EXHIBIT "1"

EXHIBIT A




**D-412-CV-2015-00383**

**CERTIFICATE OF SERVICE/E-FILING**

I certify that on this 29<sup>th</sup> day of September 2015, a copy of the foregoing Order was e-filed and/or mailed to parties listed below:

Laura Porter, [lporter@tomrhodeslaw.com](mailto:lporter@tomrhodeslaw.com)

  
\_\_\_\_\_  
Jessieann Montoya, TCAA